

Internal Revenue Service  
**memorandum**

CC:TL-N-9994-89

Br4:RBWeinstock

date:

NOV 01 1989

to: District Counsel, Kansas City  
Attn. Dale P. Kensinger

from: Assistant Chief Counsel (Tax Litigation)

subject:

This is in response to your office's request for formal tax litigation advice dated September 12, 1989.

This case involves [REDACTED] ([REDACTED]) claim for a refund of taxes it paid even though its exempt status under I.R.C. § 501(c)(6) has not been revoked by the IRS. [REDACTED] is an organization comprised of businesses that use IBM mainframe computers. In Rev. Rul. 83-164, 1983-2 C.B. 95, the Service concluded that an organization comprised of users of a single manufacturer's computers had a primary activity of promoting the common business interests of users of one particular brand of computer, and represented only a segment of an industry rather than an entire line of business. Therefore, it did not qualify for exemption as a business league under section 501(c)(6). The position stated in the Revenue Ruling was upheld in National Prime Users Group, inc. v. United States, 667 F.Supp. 250 (D. Md. 1987). [REDACTED] then filed tax returns as a taxable corporation, and paid the tax stated therein. [REDACTED] subsequently filed a claim for refund as an exempt business league and filed the instant suit for refund.

Your office sought our views as to whether [REDACTED] qualified for exemption under I.R.C. § 501(c)(6), particularly in light of the failure of the Service to have revoked [REDACTED]'s exemption. The Department of Justice had requested the Service to determine whether [REDACTED]'s exemption should be revoked, or in the alternative authorize the Department of Justice to inform the Court that the Service intend to revoke [REDACTED]'s exemption unless [REDACTED] obtains a judicial determination that it constitutes a business league within the meaning of I.R.C. § 501(c)(6).

We have coordinated this matter with the Exempt Organizations Technical Division (OP:E:E) who advised us that the Chicago key district office recently issued a "30-day letter" to [REDACTED]. The 30-day letter was issued to [REDACTED] after examination and proposes that the exempt status of [REDACTED] under I.R.C. § 501(c)(6) be revoked. The

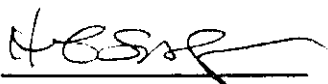
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basis for revocation is that [REDACTED]'s activities fall within the ambit of facts as set forth in Rev. Rul. 83-164. The Exempt Organizations Technical Division and our office agree that [REDACTED] should be revoked for taxable years after 1983, that is, years subsequent to the publication of the revenue ruling.

[REDACTED] has requested that the key district suspend the 30-day letter to allow a judicial determination of their exempt status to be made in the context of their refund suit. After we conferred with [REDACTED], the Department of Justice attorney handling the defense of this suit, the Chicago key district was advised that we had no objection to suspending the 30-day letter pending the outcome of this litigation. Of course, if we prevail in this litigation, [REDACTED]'s exemption will be revoked as stated above.

If you have any other questions, please do not hesitate to contact Ronald B. Weinstock at FTS 566-3345.

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(Tax Litigation)

By:   
HENRY G. SALAMY  
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